

Vice President—the job of the Solicitor General does not lend itself to on-the-job training. One time, Rudy Giuliani was arguing about who should be his replacement as U.S. Attorney in Manhattan, and they were discussing people with very little experience. He said: I think it would be nice if they were able to contribute to the discussion every now and then.

I think it is good to have some experience. So I don't see a sense of history here to overcome what I consider to be bad judgment on a very important matter. I supported the nomination of Eric Holder. I like him and I hope he will be a good Attorney General; I think he will. I intend to support most of the other nominees to the Department of Justice. I certainly hope to. But I am not able to support Elena Kagan's nomination in view of her positions concerning the ability of the U.S. military to come on the campus of Harvard and actually recruit the young men and women who might wish to join the military. I think that was wrong. I also believe she has a very significant lack of relevant experience for the position.

I yield the floor.

Mr. INHOFE. I oppose the nomination of Elena Kagan for Solicitor General of the United States. I previously spoke against her on the floor and talked about the reason I was opposed to her as well as David Ogden for his representation of the pornography industry. It is kind of hard for me to understand how someone who is the No. 2 position in the Justice Department has a history of representing the pornography industry. Then, of course, the nominations of Dawn Johnson and Thomas Perrelli I am opposed to because of their strong pro-abortion positions.

But as far as Elena Kagan, it is important for those who are going to vote in favor of her to know some of the things that have happened in her background. Because of its great importance, the office of Solicitor General is often referred to as the 10th Supreme Court Justice.

When serving as a dean of Harvard Law School, she demonstrated poor judgment on a very important issue to me. Ms. Kagan banned the U.S. military from recruiting on campus. She and other law school officials sued to overturn the Solomon amendment. The Solomon amendment originated in the House. Congressman Jerry Solomon had an amendment that said no university could preclude the military from trying to recruit on campus. This was a direct violation of the amendment. She actually was claiming that the Solomon amendment was immoral. She filed an amicus brief with the Supreme Court opposing the amendment. The Court unanimously ruled against her position and affirmed that the Solomon amendment was constitutional.

The Department of Justice needs people who adhere to the law and not to their ideology. While certainly I oppose

many of the positions taken by these nominees, I am even more concerned that their records of being ideologically driven will weaken the integrity and neutrality of the Department of Justice.

I oppose the nomination of Elena Kagan.

Mr. HATCH. Mr. President, today I will vote to confirm the nomination of Elena Kagan to be the next Solicitor General of the United States. Because the Constitution gives the appointment power to the President, not to the Senate, I believe the President is owed some deference so long as his nominees are qualified. This standard applies particularly to his executive branch appointments. I will vote for the nomination before us because I believe this standard is satisfied.

Dean Kagan would not be the first Solicitor General to have come from legal academia. Walter Dellinger came to the Clinton administration from Duke. Rex Lee served in the Reagan administration after founding Brigham Young University School of Law.

Nor would Dean Kagan be the first Solicitor general to have come to the post from Harvard. Archibald Cox came from the Harvard law faculty to serve as Solicitor General in the Kennedy administration. Erin Griswold became Solicitor General in 1967 after a dozen years as a Harvard law professor and another 19 as dean. Charles Fried, who taught at Harvard for nearly a quarter century before becoming Solicitor General in 1985, went back to teaching and is now a colleague of Dean Kagan. I was pleased to see him at her confirmation hearing.

I would note two other things about Dean Kagan's qualifications. First, she has no experience arguing before any court. I have long believed that prior judicial experience is not a prerequisite for successful judicial service. Justice Felix Frankfurter taught at Harvard Law School from 1921 until President Franklin D. Roosevelt appointed him to the Supreme Court in 1939. During that time, by the way, he turned down the opportunity to become Solicitor General. But Justice Frankfurter famously wrote in 1957 that the correlation between prior judicial experience and fitness for the Supreme Court is, as he put it, "precisely zero."

But courtroom argument, especially appellate advocacy, is a more specific skill that is related more directly to the Solicitor General's job. As such, Dean Kagan's complete lack of such experience is more significant. Which leads me to the second point that, despite her lack of courtroom experience, every living former Solicitor General has endorsed her nomination. They know better than anyone what it takes to succeed in the post and believe she has what it takes.

Speaking of endorsements, Dean Kagan is also supported by a number of lawyers and former government officials who are well known in conservative legal circles. These include Peter

Keisler, who served as Assistant Attorney General and Acting Attorney General under President George W. Bush; Miguel Estrada, prominent Supreme Court practitioner and a former nominee to the U.S. Court of Appeals; Jack Goldsmith, who headed the Justice Department's Office of Legal Counsel under the previous President; and Paul Cappuccino, who served in the Justice Department during the first Bush administration and is now general counsel at TimeWarner.

A few other issues have given me pause during the confirmation process. When Dean Kagan served as a law clerk for Justice Thurgood Marshall, she wrote a memo in a case challenging the constitutionality of the Adolescent Family Life Act. That statute provided funds for demonstration projects aimed at reducing teen pregnancy. Dean Kagan objected to including religious groups in such projects, insisting that "[i]t would be difficult for any religious organization to participate in such projects without injecting some kind of religious teaching." She actually argued for excluding all religious organizations from programs or projects that are, in her view, "so close to the central concerns of religion." This is a narrow-minded, I think even ignorant, view of religious groups and her recommendation of discrimination against them comes close, it seems to me, to raising a different kind of constitutional problem. Thankfully, the Supreme Court did not follow her suggestion and instead upheld the statute. When asked about it at her hearing in February, Dean Kagan said that, looking back, she now considers that to be, as she put it, "the dumbest thing I ever heard." With all due respect, I agree.

Dean Kagan took a very strong, very public stand against the so-called Solomon Amendment, which withholds federal funds from schools that deny access to military recruiters. Harvard denied such access in protest of the military's exclusion of openly gay servicemembers. Dean Kagan chose to allow access only under the threat of the entire university losing federal money. But she condemned in the exclusion policy in the strongest terms, calling it repugnant and "a profound wrong—a moral injustice of the first order." In her personal capacity, she joined other law professors on a friend of the court brief in the lawsuit challenging the policy. In 2006, the Supreme Court upheld the Solomon Amendment, specifically rejecting the position Dean Kagan had taken, saying: "We refuse to interpret the Solomon Amendment in a way that . . . would render it a largely meaningless exercise." Dean Kagan is entitled to take that or any other position on that or any other issue she chooses. But it raises the question whether she would be able, as the Solicitor General must, to put aside even such strongly held personal views and vigorously defend only the legal interests of the United States. She assured the Judiciary Committee that she could do that, even